

Intercreditor Agreement
Section 232

**U.S. Department of Housing
and Urban Development**
Office of Healthcare Programs

OMB Approval No. 9999-9999
(exp. mm/dd/yyyy)

Public reporting burden for this collection of information is estimated to average 2 hours. This includes the time for collecting, reviewing, and reporting the data. The information is being collected to obtain the supportive documentation which must be submitted to HUD for approval, and is necessary to ensure that viable projects are developed and maintained. The Department will use this information to determine if properties meet HUD requirements with respect to development, operation and/or asset management, as well as ensuring the continued marketability of the properties. Response to this request for information is required in order to receive the benefits to be derived. This agency may not collect this information, and you are not required to complete this form unless it displays a currently valid OMB control number. No confidentiality is assured.

Warning: HUD will prosecute false claims and statements. Conviction may result in criminal and/or civil penalties. (18 U.S.C. 1001, 1010, 1012; 31 U.S.C. 3729, 3802)

THIS INTERCREDITOR AGREEMENT (this “**Agreement**”) is entered into as of the _____ day of _____, 20____, by and among (i) _____ a _____, with a place of business at _____ (“**AR Lender**”), (ii) _____, a _____, with a place of business at _____ (“**FHA Lender**”), (iii) _____, a _____ with a place of business at _____ (“**Owner**”), and (iv) _____, a _____ with a place of business at _____ (“**Operator**”). AR Lender, FHA Lender, Owner and Operator are referred to in this Agreement individually as a “**Party**” and collectively as the “**Parties**”.

WHEREAS, FHA Lender has made and may in the future make loans to Owner secured and to be secured by the Facility operated by the Operator and;

WHEREAS, Operator has entered into that certain [name of Operating Lease, Sub-lease, or Owner-Operator Agreement] with [_____ (“Master Tenant”) OR Owner] with respect to the Facility (the “Owner-Operator Agreement”), and Operator further entered into a Security Agreement for the benefit of FHA Lender (the “Operator Security Agreement”), which security agreement grants a security interest in certain collateral of the Operator which includes the AR Lender Priority Collateral; and

WHEREAS, FHA Lender has made or may in the future make loans and/or extensions of credit to or for the benefit of Owner secured by the Facility operated by the Operator and;

WHEREAS, AR Lender and FHA Lender have agreed upon AR Lender’s and FHA Lender’s respective rights in and to the AR Lender Priority Collateral and FHA Lender Priority Collateral which agreements and understandings are set forth below. In the event of a conflict between the terms of this Agreement, and the AR Loan documents, or the HUD Loan Documents, the terms of this document shall govern and control.

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(Version 1- Lessor has security interest in assets of Lessee)

THIS INTERCREDITOR AGREEMENT (this “**Agreement**”) is entered into as of the _____ day of _____, 2008, by and among _____, a _____, with a place of business at _____ (“**AR Lender**”), and _____, a _____, with a place of business at _____ (“**FHA Mortgagee**”).

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WHEREAS, each of the entities set forth on Schedule 2 hereto (each, a “**Lessor**” and collectively, “**Lessors**”) entered into a Lease (each, a “**Lease**” and collectively, the “**Leases**”) with the Lessees set forth beside each Lessor’s name, which Leases grant to Lessor

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NOW, THEREFORE, in consideration of the mutual covenants set forth below, and intending to be legally bound, the Parties hereto hereby agree as follows:

1. DEFINITIONS.

All terms used herein which are not specifically defined shall have the meanings provided in Article 9 of the Uniform Commercial Code as in effect in the State of (Insert property jurisdiction) from time to time (the “UCC”). In addition to the terms defined elsewhere in this Agreement, the following terms shall have the following meanings when used in this Agreement.

1.1 “Accounts” shall mean all right, title and interest of Operator in and to the following, in each case arising from Operator’s operation of the Facility in the ordinary course of Operator’s business: (a) all rights to payment of a monetary obligation, whether or not earned by performance, including, but not limited to, accounts receivable, health-care insurance receivables, Medicaid and Medicare receivables, Veterans Administration receivables, or other governmental receivables, private patient receivables, and HMO receivables, (b) payment intangibles, (c) guaranties, letter-of-credit rights and other supporting obligations relating to the property described in clauses (a) and (b); and (d) all of the proceeds of the property described in clauses (a), (b) and (c). Notwithstanding the foregoing, “Accounts” do not include accounts arising from the sale of Operator’s equipment, inventory or other goods, other than accounts arising from the sale of Operator’s inventory in the ordinary course of Operator’s business.

1.2 “Advances” shall mean any “Revolving Loans,” as such term is defined in the AR Loan Agreement.

1.3 “AR Loan” shall mean a loan, or other extension of credit or financing accommodation made by AR Lender to Operator pursuant to the AR Loan Agreement.

1.4 “AR Loan Agreement” shall mean that certain [Revolving Credit and Security Agreement (enter proper name of document)], dated as of [], by and among AR Lender, as lender, and Operator, as borrower, as amended, restated, supplemented or otherwise modified from time to time in accordance with the terms of this Agreement.

1.5 “AR Loan Documents” shall mean all documents evidencing or securing the AR Loan, including, without limitation, the AR Loan Agreement and those other documents identified on Schedule 1 attached hereto, in each case, as amended, restated, supplemented or otherwise modified from time to time in accordance with the terms of this Agreement.

1.6 “AR Lender Priority Collateral” shall mean all right, title and interest of

Operator in and to the following: (a) all Accounts arising prior to the Cut-Off Time and the identifiable cash proceeds thereof and (b) all Accounts arising after the Cut-Off Time and the identifiable cash proceeds thereof solely to the extent of (and in the amount of) Protective Advances made after the Cut-Off Time in accordance with the

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Deleted: Lessees in, to and under all personal property, Real Estate (as defined in the AR Lender Loan Agreement) (other than the Facilities) and other assets, whether now owned by or owing to, or hereafter acquired by or arising in favor of, Lessees (including under any trade names, styles or derivations thereof), and whether owned or consigned by or to, or leased from or to, Borrowers, and regardless of where located including the following: ¶ <#>all Accounts;¶ (b) all Books;¶ (c) all Chattel Paper;¶ <#>all Documents;¶ <#>all General Intangibles (including payment intangibles and Software);¶ <#>all Goods (including Inventory, Equipment and Fixtures), other than the FHA Mortgagee’s Priority Collateral;¶ <#>all Instruments;¶ <#>all Investment Property;¶ <#> all Deposit Accounts of all the Lessees, including all Blocked Accounts (as defined in the AR Lender Loan Agreement), Concentration ...
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terms of this Agreement provided that the collateral should be prioritized in accordance with section 2.1.

1.7 **“Business Day”** shall mean any day other than a Saturday, a Sunday, or any day that banks in [insert Bank’s Jurisdiction] or [insert Property Jurisdiction if different from Bank’s Jurisdiction] are required or permitted by law to close.

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1.8 **“Cut-Off Time”** shall mean the time that FHA Lender delivers (in the manner provided in Section 3.5) to AR Lender a written notice (on or after the occurrence and during the continuance of a Triggering Event) in the form of Exhibit A.

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1.9 **“Facility”** shall that certain [nursing home / assisted living facility] located at [] and commonly known as [].

1.10 **“FHA Lender’s Priority Collateral”** shall mean any and all property (whether real, personal or mixed, tangible or intangible) in which FHA Lender and/or HUD is granted liens, encumbrances, security interests and other rights pursuant to any of the HUD Loan Documents, except for the AR Lender Priority Collateral, it being understood that FHA Lender and/or HUD has an “all assets” security interest on the assets of Operator including but not limited to (i) the skilled nursing facility licenses and any other healthcare or long term care licenses for the Facility, (ii) all Medicare and Medicaid/state/county provider agreements for the Facility, (iii) the certificates of need for the Facility, (iv) the Owner-Operator Agreement and (v) Operator’s furniture, fixtures, equipment, software and inventory directly related to such Facility.

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1.11 **“HUD”** shall mean the U.S. Secretary of Housing and Urban Development.

1.12 **“HUD Loan(s)”** shall mean a mortgage loan made or held by FHA Lender and insured by HUD with respect to the Facility.

1.13 **“HUD Loan Documents”** shall mean, with respect to any HUD Loan, any and all promissory notes, deeds of trust, mortgages, regulatory agreements and any and all other documents required by FHA Lender and/or HUD as identified on Schedule 2 attached hereto in connection with such HUD Loan, in each case, as amended, restated, supplemented or otherwise modified from time to time.

Deleted: <#>“Governmental Authority” shall mean any federal, state, municipal, national, local or other governmental department, court, commission, board, bureau, agency or instrumentality or political subdivision thereof, or any entity or officer exercising executive, legislative or judicial, regulatory or administrative functions of or pertaining to any government or any court, in each case, whether of the United States or a state, territory or possession thereof, a foreign sovereign entity or country or jurisdiction or the District of Columbia.¶
<#> “Government Contracts” shall mean all contracts with any Government Authority, and all amendments thereto.¶

1.14 **“HUD Obligations”** shall mean the HUD Loan and all other indebtedness, liabilities and obligations owing to FHA Lender and/or HUD under the HUD Loan Documents.

1.15 **“Maximum Principal Amount”** shall mean \$ [insert maximum AR Lender revolving loan commitment amount approved by OHP].

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1.16 **“AR Loan Obligations”** Notwithstanding anything to the contrary in the AR Loan Documents, only the following obligations shall be secured by AR’s Lender’s liens and/or security interest in the Accounts or the FHA Mortgagee Priority Collateral (collectively, the “Project Collateral”): (i) the principal amount of the Revolving Loan, up to the Maximum Principal Amount; (ii) interest on the Revolving Loan; (iii) amounts advanced by AR Lender that are reasonably necessary to preserve and protect the AR Lender Priority Collateral; (iii) fees associated with the financing that are set forth in the AR Loan Documents; and (iv) out of pocket fees and expenses incurred by AR lender in the administration and enforcement of the AR Loan Documents.

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Notwithstanding anything to the contrary in the AR Loan Documents or this Intercreditor Agreement, this Intercreditor Agreement shall not be deemed an “Obligation” or “Priority Obligation”, nor shall any obligation to pay, reimburse, or indemnify AR Lender or any other person or entity for any costs, fees, expenses, liabilities, claims, judgments, settlements or other costs or expenses of any nature (collectively, “Indemnity Obligations”) that relate to any breach of this Intercreditor or any dispute with FHA Lender or HUD arising hereunder be deemed an “AR Loan Obligation” or “Priority Obligation”, nor shall any advance made by AR lender for such purpose be deemed a protective advance. With respect to any Indemnity Obligation that relates to any other claim, AR Lender shall not have a first lien on Project Collateral to secure any such obligations, such obligations shall not be “Priority Obligations”, and no advance made by AR lender for such purpose shall be deemed a Protective Advance. Nothing in this section shall preclude AR lender from securing the aforesaid obligations with non-Project Collateral, guaranties that are not secured by a first lien on Project Collateral, or insurance proceeds.

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1.17 **“Paid in Full”** shall mean the final payment in full of the Maximum Principal Amount as defined in the AR Loan Agreement and all of the AR Loan Obligations (or with respect to any AR Loan Obligations under the AR Loan Documents consisting of contingent obligations under letters of credit, the setting apart of cash sufficient to discharge such obligations in an account for the exclusive benefit of AR Lender) in which account AR Lender shall have been granted a perfected security interest. Provided however, that a reduction in the outstanding balance due under the AR Loan Documents to zero shall not mean that the AR Loan Obligations have been “paid in full” unless and until, pursuant to the AR Loan Documents no additional amounts may be borrowed under the AR Loan Documents or the AR Lender provides notice that no additional amounts may be borrowed under the AR Loan Documents.

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1.18 **“Possession Date”** shall mean, with respect to the Facility, the earlier of the date upon which (a) FHA Lender, or its nominee, has taken actual physical possession and control of the Facility, whether by foreclosure, deed in lieu of foreclosure, appointment of a receiver or other legal process, or (b) FHA Lender, or its nominee, has begun the operation and management of the Facility.

1.19 **“Priority Obligations”** shall mean and include (a) the principal amount outstanding under the AR Loans at the Cut-Off Time, up to the Maximum Principal

Amount, (b) the amount of any AR Loan Advances (other than Protective Advances) made after the Cut-Off Time with the written approval of FHA Lender, (c) the amount of Protective Advances, (d) out-of-pocket fees and expenses incurred by AR Lender in connection with the administration and/or enforcement of the AR Loan Documents and (e) interest accruing on any of the foregoing at the contract (i.e. non-default) rate of interest. Without limiting the generality of the foregoing, "Priority Obligations" shall exclude late charges, indemnity obligations, prepayment fees and charges, exit fees, breakage fees and charges, unused facility fees, facility fees, commitment fees, closing fees, amendment fees, forbearance fees, extension or renewal fees and any default interest (to the extent in excess of the non-default interest rate).

1.20 "Protective Advances" shall mean amounts advanced by AR Lender following the Cut-Off Time and prior to the Possession Date that are reasonably necessary to preserve and protect the AR Lender Priority Collateral and written notice of which is given to FHA Lender within one Business Day after the subject advance is made.

1.21 "Triggering Event" shall mean the earliest of (i) written notice to AR Lender of the occurrence of a payment default under the HUD Loan Documents, or (ii) written notice to AR Lender of the acceleration by FHA Lender of the sums due under the HUD Loan Documents, or (iii) written notice from FHA Lender to AR Lender that an Event of Default (as defined in any of the HUD Loan Documents) has occurred, or (iv) written notice from FHA Lender or Owner to AR Lender that an event of default under the Owner-Operator Agreement has occurred, (v) the occurrence of a default under the AR Loan Documents which, under the terms of the AR Loan Documents, permits AR Lender to decline to make future AR Loan Advances or (vi) the acceleration or maturity of the AR Loan.

2. PRIORITIES

2.1 AR Lender Priority.

(a) AR Lender and FHA Lender agree that, as between AR Lender and FHA Lender, subject to Section 2.1(b), at all times, whether before, during or after the pendency of any bankruptcy, reorganization or other insolvency proceeding, and notwithstanding the taking of possession of, or other exercise of rights in respect of the FHA Lender Priority Collateral (or any portion thereof) or the priorities that ordinarily would result under the Uniform Commercial Code as enacted in each and every applicable jurisdiction, and as amended from time to time, and other applicable law for the order of granting or perfecting of any security interests referred to herein, AR Lender shall have a first and prior security interest in, upon and to the AR Lender Priority Collateral. FHA Lender, Owner and Operator agree, that, in the event AR Lender seeks to enforce any of its remedies under the AR Loan Documents, AR Lender may have reasonable access to the Facility for any inspection and copying of the books and records of Operator relating to the AR Lender Priority Collateral and the FHA Lender Priority Collateral, provided that AR Lender shall promptly repair any damage to the Property caused by AR Lender or its agents resulting from such inspection and copying. AR

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Lender agrees that, notwithstanding anything in the AR Loan Documents to the contrary: (a) AR Lender may not require Operator to deliver the books and records of Operator to AR Lender; and (b) AR Lender's rights to inspect and copy Operator's books and records shall be limited to those rights set forth in the preceding sentence.

(b) If AR Lender's security interest (as now or in the future existing) in the AR Lender Priority Collateral becomes, in whole or in part, for any reason, unperfected or is judicially or administratively determined to be unenforceable, in whole or in part, or is voided, in whole or in part, then the subordination by FHA Lender in favor of AR Lender under Section 2.1(a) hereof will not be effective as to the AR Lender Priority Collateral. If any such event occurs, and as a result thereof, a creditor subordinate to AR Lender would have or would be entitled to claim, priority over the FHA Lender in the AR Lender Priority Collateral, nothing in this Agreement is intended or shall be construed as a subordination by FHA Lender to such other creditor.

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Notwithstanding the foregoing, FHA Mortgagee shall have a first priority security interest in the FHA Mortgagee's

2.2 FHA Lender Priority.

(a) AR Lender and FHA Lender agree that, as between AR Lender and FHA Lender, subject to Section 2.2(b), at all times, whether before, during or after the pendency of any bankruptcy, reorganization or other insolvency proceeding, and notwithstanding the taking of possession of, or other exercise of rights in respect of, the AR Lender Priority Collateral (or any portion thereof) or the priorities that ordinarily would result under the Uniform Commercial Code as enacted in each and every applicable jurisdiction, and as amended from time to time, and other applicable law for the order of granting or perfecting of any security interests referred to herein, FHA Lender shall have a first and prior security interest in, upon and to the FHA Lender Priority Collateral; and AR Lender hereby subordinates to FHA Lender AR Lender's security interest, if any, in the FHA Lender Priority Collateral. AR Lender agrees it shall not foreclose or otherwise exercise any remedy with respect to any second lien it has or may acquire with respect to Accounts or the FHA Lender Priority Collateral, without the prior written consent of the FHA Lender. Promptly upon execution of this Agreement, AR Lender agrees to cause itself to be removed from any insurance policy and insurance certificate that has any designation of AR Lender as (a) loss payee or lender's loss payee on any insurance with respect to any FHA Lender Priority Collateral upon which AR Lender does not have a subordinate lien as permitted by this Agreement and (b) primary loss payee or primary lender's loss payee on any insurance with respect to any FHA Lender Priority Collateral upon which AR Lender has a subordinate lien permitted under this Agreement.

(b) If FHA Lender's security interest (as now or in the future existing) in the FHA Lender Priority Collateral becomes, in whole or in part, for any reason, unperfected or is judicially or administratively determined to be unenforceable, in whole or in part, or is voided, in whole or in part, then, to the extent FHA Lender has a security interest in the FHA Lender's Priority Collateral, the subordination by AR Lender in favor of FHA Lender under Section 2.2(a) hereof will not be effective as to the FHA Lender Priority Collateral. If any such event occurs, and as a result thereof, a creditor subordinate to FHA Lender would have or would be entitled to claim, priority over AR Lender in the FHA

Lender Priority Collateral, nothing in this Agreement is intended or shall be construed as a subordination by AR Lender to such other creditor. Notwithstanding the foregoing, FHA Lender shall have a first priority security interest in the FHA Lender's Priority Collateral applicable to the corresponding Facility, provided however, AR Lender shall have the ability to utilize the FHA Lender's Priority Collateral solely to the extent necessary to exercise any of AR Lender's rights and/or remedies (including without limitation billing and collecting the Operator's accounts receivable and other assets comprising AR Lender Priority Collateral) under the AR Loan Documents.

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2.3 **Standstill.**

(a) Until the AR Loan Obligations have been paid in full, FHA Lender and Owner shall not affirmatively exercise any remedies with regard to the AR Lender Priority Collateral; provided, however, after a Triggering Event, the foregoing shall not prohibit the FHA Lender from (i) taking any action against the Operator with respect to any FHA Lender's Priority Collateral, (ii) terminating a Owner-Operator Agreement, (iii) commencing an action for possession or for collection of rent or other monetary amounts due under such Owner-Operator Agreement or for specific enforcement of a Operator's covenants under such Owner-Operator Agreement, so long as such actions do not comprise the exercise of a remedy with regard to AR Lender Priority Collateral, (iv) pursuing the remedies specified the definition of "Possession Date," or (v) applying to the HUD Obligations proceeds of the AR Lender Priority Collateral after repayment in full of the Priority Obligations.

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(b) Until the HUD Obligations have been satisfied in full, AR Lender shall not affirmatively exercise any remedies with regard to the FHA Lender Priority Collateral.

(c) Without limiting the foregoing, FHA Lender shall deliver to AR Lender ten (10) business days' prior written notice of the commencement of any action or undertaking to take physical possession, control or management of the Facility (the "Possession Date Notice").

(d) AR Lender shall have a first and prior security interest in the AR Lender Priority Collateral until the payment in full of the Priority Obligations, and FHA Lender shall have a subordinate lien in the AR Lender Priority Collateral. From and after the Cut-Off Time, all amounts received by AR Lender on account of the AR Lender Priority Collateral shall be applied solely to the Priority Obligations and AR Lender shall not recover any portion of the AR Loan Obligations, other than the Priority Obligations, from the AR Lender Priority Collateral until the HUD Obligations are paid in full. Nothing herein shall prevent AR Lender from collecting the full amount of the AR Loan Obligations from any guarantors thereof and/or from collateral other than the AR Lender Priority Collateral and/or the FHA Lender Priority Collateral. FHA Lender shall have a first and prior security interest in any Accounts arising after the Cut-Off Time, other than as expressly provided in clause (b) of the definition of AR Lender Priority Collateral.

(e) Without limiting any of its rights hereunder or under the AR Loan Documents, at any time following its receipt of a Possession Date Notice, AR Lender shall have the right to cease making Advances. To the extent AR Lender makes Advances following its receipt of a Possession Date Notice, it shall retain a first priority lien in all AR Lender Priority Collateral related to the Accounts against which it has made such advances prior to Possession Date.

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(f) Except as may be expressly set forth herein, including but not limited to in Section 2.6(b) hereof, FHA Lender, Owner, and Operator hereby agree that any AR Lender Priority Collateral and proceeds thereof, which may come into the possession of FHA Lender or Owner or Operator will be held in trust for AR Lender, and FHA Lender and Owner shall turn over any AR Lender Priority Collateral and/or proceeds thereof to AR Lender, in the same form as received with any necessary endorsements, promptly upon receipt, until the AR Loan and all other AR Loan Obligations of Operator to AR Lender under the AR Loan Documents have been indefeasibly paid in full in accordance with the terms of this Agreement and the commitments of AR Lender to fund thereunder have terminated.

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2.4 No Contest.

(a) FHA Lender agrees that it will not make any assertion or claim in any action, suit or proceeding of any nature whatsoever in any way challenging the priority, validity or effectiveness of the liens and security interests granted to AR Lender with respect to the AR Lender Priority Collateral provided that, nothing in this Section 2.4(a) shall prevent FHA Lender from taking all appropriate steps to protect and preserve its priority in the circumstances contemplated in Section 2.1(b). FHA Lender further agrees that, subject to Section 2.2(b), AR Lender's lien and security interest in the AR Lender Priority Collateral shall at all times, while any indebtedness or obligations under the AR Loan Documents are owing from Operator to AR Lender, be superior and prior to the liens and security interests granted to the FHA Lender in such AR Lender Priority Collateral, irrespective of the time, order or method of attachment or perfection of AR Lender's and the FHA Lender's liens and security interests, or the filing of financing statements, or the taking of possession of the FHA Lender's Priority Collateral, or any portion thereof.

(b) AR Lender agrees that it will not make any assertion or claim in any action, suit or proceeding of any nature whatsoever in any way challenging the

priority, validity or effectiveness of the liens and security interests granted to FHA Lender with respect to the FHA Lender's Priority Collateral; provided that, nothing in this Section 2.4(b) shall prevent AR Lender from taking all appropriate steps to protect and preserve its priority in the circumstances contemplated in Section 2.2(b). AR Lender further agrees that FHA Lender's lien and security interest in the FHA Lender's Priority Collateral shall at all times while any indebtedness or obligations under the HUD Loan Documents are owing from the Owner to the FHA Lender, be superior and prior to the liens and security interests granted to AR Lender in such FHA Lender's Priority Collateral, irrespective of the time, order or method of attachment or perfection of the FHA Lender's liens and security interests, or the filing of financing statements or the taking of possession of the AR Lender Priority Collateral, or any portion thereof.

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(c) AR Lender waives, in respect of FHA Lender, any and all rights under any theory of marshalling or ordering of the disposition of collateral and accordingly, AR Lender agrees that FHA Lender may (i) proceed directly against any collateral in which FHA Lender has a lien or security interest and/or any guarantor of the HUD Obligations in any particular order and (ii) release, surrender, substitute or exchange any collateral and/or any guarantor at any time without affecting the agreements set forth in this Agreement. FHA Lender waives, in respect of AR Lender, any and all rights under any theory of marshalling or ordering of the disposition of collateral and accordingly, FHA Lender agrees that AR Lender may (A) proceed directly against any collateral in which AR Lender has a lien or security interest (subject to the terms of this Agreement) and/or any guarantor of the AR Loan Obligations in any particular order and (B) release, surrender, substitute or exchange any collateral and/or any guarantor at any time without affecting the agreements set forth in this Agreement.

2.5 **Releases; Bailee for Perfection.**

(a) Notwithstanding anything to the contrary contained herein or in any of the HUD Loan Documents, the Operator Security Agreement or the Owner-Operator Agreement (or any sublease thereof), but subject to Section 2.5(b) below, FHA Lender agrees that in the event any AR Lender Priority Collateral (but not the AR Loan) is sold, transferred or conveyed or otherwise disposed of in conjunction with the exercise of AR Lender's remedies against Operator under the AR Loan Documents, the FHA Lender shall release all of its rights to and interests in such AR Lender Priority Collateral. Nothing in this Section 2.5(a) shall require any release of the FHA Lender Priority Collateral. FHA Lender shall execute such release documents as AR Lender may reasonably request to effectuate the terms of this Section 2.5(a). Notwithstanding anything to the contrary contained herein or in any of the AR Loan Documents, but subject to Section 2.5(b), AR Lender agrees that in the event any FHA Lender Priority Collateral (but not the HUD Loan) is sold, transferred or conveyed or otherwise disposed of in conjunction with the exercise of FHA Lender's remedies under the HUD Loan Documents, AR Lender shall release all of its rights to and interests in (if any) such FHA Lender Priority Collateral and such property shall be transferred free and clear of all liens and security interests in favor of AR Lender. Nothing in this Section 2.5(a) shall require any release of the AR Lender

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Priority Collateral. AR Lender shall execute such release documents as FHA Lender may reasonably request to effectuate the terms of this Section 2.5(a).

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(b) Notwithstanding the foregoing, to the extent that the proceeds of any sale of AR Lender Priority Collateral exceed the amount necessary to pay and satisfy in full the AR Loan Obligations (or, after the Cut-Off Time, the Priority Obligations), such excess shall be delivered to FHA Lender (to the extent that FHA Lender is otherwise entitled thereto in accordance with the HUD Loan Documents and/or applicable law) for application by FHA Lender pursuant to the HUD Loan Documents. To the extent that the proceeds of any sale of FHA Lender Priority Collateral exceed the amount necessary to pay and satisfy the HUD Obligations in full, such excess shall be delivered to AR Lender (to the extent that AR Lender has a security interest in the FHA Lender Priority Collateral and is otherwise entitled thereto in accordance with the AR Loan Documents and/or applicable law) for application by AR Lender pursuant to the AR Loan Documents.

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(c) In the event FHA Lender or its nominee purchases any AR Lender Priority Collateral (which it shall have no obligation to purchase), AR Lender agrees that upon receipt of the purchase price (i) all such AR Lender Priority Collateral so sold, and all liens or security interests therein, and all proceeds thereof, shall be deemed to be held by AR Lender as agent for the purchaser until effectively transferred to such purchaser's ownership and control, (ii) AR Lender shall continue to receive such AR Lender Priority Collateral and proceeds thereof in existing lockbox or controlled deposit accounts until such purchaser has made alternative collection and deposit arrangements (which it shall arrange within thirty (30) days), and (iii) AR Lender shall remit all collections of such purchased AR Lender Priority Collateral in the same manner as provided in Section 2.6.

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(d) With respect to any AR Lender Priority Collateral and/or FHA Lender Priority Collateral that FHA Lender cannot perfect a security interest in by filing a financing statement, and with respect to which AR Lender has perfected a security interest, AR Lender shall be deemed to be holding such AR Lender Priority Collateral and/or FHA Lender Priority Collateral as representative and bailee for FHA Lender for the purposes of perfection of FHA Lender's liens thereon or therein under the Uniform Commercial Code as in effect in each applicable jurisdiction, and as amended from time to time.

2.6 Return of Payments

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(a) Upon the AR Loan Obligations being Paid in Full, AR Lender agrees that, upon receipt of the AR Loan Obligations being paid in full and the termination of AR Lender's commitment under the AR Loan Agreement, any AR Lender Priority Collateral and proceeds thereof, which may come into AR Lender's possession, will be held by it in trust for FHA Lender and it shall turn over any such AR Lender Priority Collateral and/or proceeds thereof to FHA Lender, in the same form as received with any necessary endorsements or in an amount equal to the proceeds received, promptly upon receipt.

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(b) **Upon the Priority Obligations being Paid in Full.** AR Lender agrees that, after the Cut-Off Time, and upon receipt of the Priority Obligations being paid in full, any AR Lender Priority Collateral and proceeds thereof, which may come into AR Lender's possession, will be held by it in trust for FHA Lender and it shall turn over any such AR Lender Priority Collateral and/or proceeds thereof to FHA Lender, in the same form as received with any necessary endorsements or in an amount equal to the proceeds received, promptly upon receipt. A Cut-Off Time shall be deemed to have occurred upon the maturity of the AR Loan, regardless of whether or not FHA Lender issues a Cut-Off Notice.

2.7 **AR Loan Documents.** AR Lender represents and warrants that as of the date hereof Schedule 1 sets forth a list of certain material documents evidencing or securing the AR Loan(s) and that true, correct and complete copies of the documents listed thereon have been provided to FHA Lender and its counsel. Until the AR Loan is paid in full, without the prior written consent of FHA Lender, the AR Loan Documents shall not be amended, restated, supplemented or otherwise modified in any way which, and AR Lender shall not take any action which, (a) results in the creation of any lien, security interest or other encumbrance in any collateral related to the Facility other than the security interests and liens in existence as of the date of this Agreement pursuant to the AR Loan Documents listed on Schedule 1, (b) increases the AR Loan to an amount in excess of the Maximum Principal Amount (other than (1) with respect to advances made by AR Lender prior to the Cut-Off Time that are reasonably necessary to preserve and protect the AR Lender Priority Collateral and (2) Protective Advances,) (c) conflicts in any way with this Agreement, the Operator Security Agreement and/or any applicable HUD rules, regulations or requirements, (d) directly or indirectly increases the amount that Operator is permitted to borrow under the AR Loan Documents, including, but not limited to, changes in the calculation of the borrowing base or any components thereof, (e) materially and adversely affects the rights or interests of FHA Lender. For the avoidance of doubt, but without limiting in any way the agreement of AR Lender set forth in the immediately prior sentence, FHA Lender agrees that its consent shall not be required for any amendment or modification of any AR Loan Documents that increases the Revolving Loan Commitment (as defined in the AR Loan Agreement) in connection with the joinder of a co-borrower thereunder that is an operator of a skilled nursing and/or rehabilitation facility that is encumbered by a mortgage loan held or insured by HUD; it being agreed and understood that, such joinder must be approved by HUD. AR Lender agrees to provide FHA Lender with true, correct and complete copies of any AR Loan Documents upon written request from FHA Lender. Operator shall provide copies of any and all amendments to the AR Loan Documents to FHA Lender prior to the effective date of any amendment.

2.8 **HUD Loan Documents.** FHA Lender agrees to provide AR Lender with true, correct and complete copies of any HUD Loan Documents upon written request from AR Lender.

2.9 **Deposit Account Control Agreements.** With respect to any deposit accounts into which the proceeds of Accounts are deposited (the "**Deposit Accounts**"), the Parties will work diligently and in good faith to enter into deposit account control

Deleted: <#>AR Lender Loan Documents. AR Lender represents and warrants that as of the date hereof Schedule 3A sets forth a list of certain material documents evidencing or securing the AR Lender Loan(s) and that copies of execution copies of the documents listed thereon have been provided to FHA Mortgagee and its counsel. AR Lender agrees to provide FHA Mortgagee with copies of any AR Lender Loan Documents upon written request from FHA Mortgagee.¶
HUD Loan Documents. FHA Mortgagee represents and warrants that Schedule 3B sets forth a list of certain material documents evidencing or securing the HUD Loan and that copies of execution copies of the documents listed thereon have been provided to AR Lender and its counsel. FHA Mortgagee agrees to provide AR Lender with

agreements and/or deposit account instructions and services agreements, with each depository bank maintaining such deposit accounts (each, a “Depository Bank”) on terms mutually acceptable to all of the Parties.

(a) Release upon the AR Loan Obligations being Paid in Full. Upon receipt by the AR Lender of payment in full and upon the AR Loan Obligations being paid in full and all commitments to loan under the AR Loan Agreement have been terminated, AR Lender agrees to promptly notify the FHA Lender of such event, and AR Lender further agrees that it will execute any and all such termination statements or releases as may be necessary to release any lien on the Operator’s assets, including but not limited to the termination of any deposit account control agreement, provider account agreement, blocked account agreement or lockbox agreement with any depository bank of Operator which holds or receives Operator’s Accounts. In the event any Party to this Agreement fails to file any required releases and/or termination statements within ten (10) business days of the other Party’s timely demand therefore, the requesting Party hereby is authorized to file a copy of this Agreement in any appropriate UCC financing office as conclusive evidence of such (non-complying) Party’s release of its security interest in the AR Lender Priority Collateral, and any third Party shall be entitled to rely upon the filing of this Agreement as a full and complete release of such Party’s security interest.

(b) Release upon payment in full of Priority Obligations. After the Cut-Off Time and until the Priority Obligations are paid in full, AR Lender will have the exclusive authority to exercise control (unless prohibited by law) over the Deposit Accounts and to provide appropriate instructions to the applicable Depository Bank and (b) at such time that the Priority Obligations are paid in full, FHA Lender will have the exclusive authority to exercise control (unless prohibited by law) over the Deposit Accounts and to provide appropriate instructions to the applicable Depository Bank, and AR Lender will take all necessary steps to effectuate the foregoing, including, but not limited to, providing appropriate instructions to the applicable Depository Bank or terminating any deposit account control agreement, provider account agreement, blocked account agreement or lockbox agreement with any depository bank of Operator which holds or receives Operator’s Accounts. The Parties acknowledge and agree that FHA Lender may require the establishment of separate Deposit Accounts into which payments with respect to Accounts arising after the Cut-Off Time are to be deposited (the “**Post Cut-Off Time Deposit Accounts**”). Each Post Cut-Off Time Deposit Account will be subject to a deposit account control agreement in favor of FHA Lender or its designee in form and substance satisfactory to FHA Lender which will give FHA Lender or its designee exclusive authority (unless prohibited by law) to exercise control over the Post Cut-Off Time Deposit Accounts and to provide appropriate instructions to the applicable Depository Bank.

3. REPRESENTATIONS

3.1 Operator operates the Facility. Operator has granted or will grant a security interest in its Accounts and certain other assets to FHA Lender and HUD (collectively, the “Senior Secured Parties”) pursuant to an Security Agreement executed

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[Alternative 2.9 if FHA Mortgagee cannot obtain a Second Lien Interest Deposit Control Agreement] ¶

Release upon Payment. Upon receipt of the infeasible payment in full of all Obligations and the termination of any commitment under the AR Lender Loan Agreement, AR Lender agrees promptly to notify the FHA Mortgagee of such event, and AR Lender further agrees that it will execute any and all such termination statements or releases as may be necessary to release any lien on the Lessees’ assets including, but not limited to, the termination of any Deposit Account Instructions and Service Agreement with [insert Bank’s name] covering Borrower’s Accounts, or any similar “Deposit Account Control Agreement between AR Lender and a deposit bank that receives or holds Borrowers’ Accounts. In the event any party

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by Operator in favor of one or more Senior Secured Parties (the "**Operator Security Agreement**") in connection with one or more loans provided to Owner by FHA Lender and insured by HUD (the "**HUD Loan**").

3.2 AR Lender consents to the Operator Security Agreement notwithstanding any provisions of the AR Loan Documents. This Intercreditor Agreement sets forth the relative priorities of AR Lender and the Senior Secured Parties in and to the assets of Operator.

3.3 Subject to the provisions of Section 3.4 below, Operator agrees that funds received by Operator from AR Lender ("**AR Loan Advances**") shall be utilized (i) first, to pay current debt service obligations of Operator to AR Lender with respect to the Facility, (ii) second, to pay Operator's costs of operations with respect to the Facility including, but not limited to, rent and all other payment obligations due under the Owner-Operator Agreement, payroll and payroll taxes, ordinary maintenance and repairs and management fees ("**Current Operating Costs**") and (iii) after the payment of Current Operating Costs, subject to applicable restrictions in the AR Loan Documents, AR Loan Advances may be distributed to Operator's shareholders, partners, members or owners, as the case may be. Notwithstanding anything to the contrary herein (but subject to any limitations in the AR Loan Documents), any distributions made by Operator to Operator's shareholders, partners, members or owners, as the case may be, shall be permitted to the extent, and only to the extent, that, as of the date of any such distribution, (i) all of Operator's debt service obligations are current, (ii) all of Operator's Current Operating Costs are current such that there is no amount thereof which is past due and (iii) there exists no defaults under the AR Loan Documents or the HUD Loan Documents.

[Version 1 of Section 3.4 – (Springing Lockbox) use only one]

3.4 Operator and AR Lender agree and certify to the existence of lockbox agreements, deposit account control agreements or like agreements with depository banks relating to Operator's deposit accounts. Operator and AR Lender agree that AR Lender shall, on the [eighth (8th)] day of each calendar month (*provided that* if such day is not a Business Day then on the immediately preceding Business Day) disburse, by wire transfer of immediately available funds as an AR Loan Advance (to the extent of available funds therefore) to the account of FHA Lender designated in writing by FHA Lender to AR Lender, an amount equal to the sum of (i) the aggregate base rent payable under the Owner-Operator Agreement for such month, (ii) taxes and insurance due and owing under the Owner-Operator Agreement for such month, and (iii) deposits to escrows and/or reserves required under the Owner-Operator Agreement (collectively, "**Current Impositions**") as designated in writing to AR Lender by FHA Lender. AR Lender agrees that it shall make such disbursement in accordance with the provisions of the foregoing sentence unless (a) there is not sufficient availability under and in accordance with the AR Loan Documents, or (b) a default or event of default shall exist or be continuing under the AR Loan Agreement. AR Lender's obligation to make each such AR Loan Advance is subject to the satisfaction of all conditions precedent thereto as set forth in the AR Loan Documents. After payment of the Current Impositions and

subject to applicable restrictions in the AR Loan Documents, any remaining AR Loan Advances may be made as directed by Operator. FHA Lender agrees to apply amounts so received on account of Current Impositions toward payment of Owner's monthly debt service obligation under the HUD Loan(s) and to fund applicable escrow and reserve requirements, with the balance (if any) remaining of the payment so collected, if any, to be remitted by FHA Lender to Owner promptly after receipt by FHA Lender. Notwithstanding anything herein or in the Intercreditor Agreement (whether express or implied) to the contrary, Senior Secured Parties, Operator and Owner acknowledge and agree that (x) AR Lender shall have no liability to any Senior Secured Parties, Operator or Owner for computation or verification of the Current Impositions and (y) none of Senior Secured Parties nor Owner shall be deemed to be a third party beneficiary of any financing relationship between Operator and AR Lender, and Senior Secured Parties and Owner hereby expressly waive and relinquish their respective rights to claim otherwise. Notwithstanding anything herein (whether express or implied) to the contrary, to the extent FHA Lender receives Current Impositions or the proceeds thereof, FHA Lender shall be entitled to retain the same and shall not be required to hold the same in trust or to disgorge the same to AR Lender, irrespective of whether the same constitutes proceeds of AR Lender Priority Collateral. The signatures of Owner and Operator below shall confirm their respective agreement to the collection, payment and disbursement of the amounts set forth herein.

[Version 2 of Section 3.4 – (Lockbox Account) use only one]

3.4 Operator and AR Lender agree and certify to the existence of lockbox agreements, deposit account control agreements or like agreements with AR Lender relating to Operator's deposit accounts. Upon, in each case, (A) AR Lender's receipt of a request for an AR Loan Advance from Operator in accordance with the AR Loan Agreement and (B) the satisfaction of all applicable requirements, conditions, and provisions set forth in the AR Loan Agreement, AR Lender agrees to disburse as an AR Loan Advance, by wire transfer of immediately available funds or by direct deposit, the amount so requested into an account designated by Operator. Nothing in this provision shall be construed to require AR Lender to continue to make AR Loan Advances following AR Lender's demand for payment in full of all amounts due under the AR Loan pursuant to the AR Loan Documents. In accordance with the terms of the Owner-Operator Agreement, Operator shall pay monthly from an AR Loan Advance and/or from other funds of Operator any and all amounts due under the Owner-Operator Agreement on or before the date when due, including, without limitation (i) the base rent payable under the Owner-Operator Agreement, (ii) taxes and insurance due and owing under the Owner-Operator Agreement, and (iii) deposits to escrows and/or reserves required under the Owner-Operator Agreement (collectively, "**Current Impositions**"). Payment made pursuant to the preceding sentence shall be either (a) paid directly to FHA Lender to the extent of the amount of Owner's monthly debt service obligation under the Mortgage Loan and to fund applicable escrow and reserve requirements, with the balance (if any) of the Current Impositions to be remitted to Owner or (b) made to an account in the name of Owner that is not required to be (and in fact is not) pledged as collateral to AR Lender pursuant to the AR Loan Documents. Owner and Operator agree to the transfer, payment

and disbursement of the amounts set forth herein. Notwithstanding anything herein or in the Intercreditor Agreement (whether express or implied) to the contrary, Senior Secured Parties, Owner and Operator acknowledge and agree that (x) AR Lender shall have no liability to Senior Secured Parties, Operator or Owner for computation or verification of the Current Impositions, (y) AR Lender shall have no liability to Senior Secured Parties or Owner for AR Lender's refusal to honor Operator's request for any AR Loan Advance and (z) none of Senior Secured Parties nor Owner shall be deemed to be a third party beneficiary of any financing relationship between Operator and AR Lender, and Senior Secured Parties and Owner hereby expressly waive and relinquish their respective rights to claim otherwise. Notwithstanding anything herein (whether express or implied) to the contrary, to the extent FHA Lender receives Current Impositions or the proceeds thereof, FHA Lender shall be entitled to retain the same and shall not be required to hold the same in trust or to disgorge the same to AR Lender, irrespective of whether the same constitutes proceeds of AR Lender Priority Collateral.

[Version 3 of Section 3.4 – (with Rent Designated Account) use only one]

3.4 Operator and AR Lender agree and certify to the existence of lockbox agreements, deposit account control agreements or like agreements with depository banks relating to Operator's deposit accounts. Upon, in each case, (A) AR Lender's receipt of a request in respect of payment of rent for an AR Loan Advance from Operator in accordance with the AR Loan Agreement (each such notice hereinafter referred to as a "**Rent Payment Request**") and (B) the satisfaction of all applicable requirements set forth under the AR Loan Agreement, AR Lender agrees to disburse as an AR Loan Advance, by wire transfer of immediately available funds, an amount equal to the "Current Impositions" (as defined below) as set forth in the Rent Payment Request to an account (i) that is not required to be (and in fact is not) pledged as collateral to AR Lender pursuant to the AR Loan Documents, (ii) the sole purpose of which is to fund Rent Payment Requests, and (iii) that is designated by Operator in the Rent Payment Request (the "**Operator Designated Account**") within the time frames set forth in the AR Loan Agreement. Each Rent Payment Request delivered by Operator shall request an amount equal to the sum of (i) the base rent payable under the Owner-Operator Agreement for such month, (ii) taxes and insurance due and owing under the Owner-Operator Agreement for such month, and (iii) deposits to escrows and/or reserves required under the Owner-Operator Agreement (collectively, "**Current Impositions**") as designated in writing to AR Lender by FHA Lender. FHA Lender shall initiate timely an ACH debit from the Operator Designated Account and apply proceeds received by FHA Lender from a Rent Payment Request toward payment of Owner's monthly debt service obligation under the HUD Loan(s) and to fund applicable escrow and reserve requirements, with the balance (if any) of the payment so collected to be remitted by FHA Lender to Owner promptly after receipt. Owner and Operator agree to the collection, payment and disbursement of the amounts set forth herein. Notwithstanding anything herein (whether express or implied) to the contrary, Senior Secured Parties, Operator and Owner acknowledge and agree that (x) AR Lender shall have no liability to Senior Secured Parties, Operator or Owner for computation or verification of the Current Impositions set forth in any Rent Payment Request, (y) AR Lender shall have no liability

to Senior Secured Parties or Owner for AR Lender's refusal to honor a Rent Payment Request and (z) none of Senior Secured Parties nor Owner shall be deemed to be a third party beneficiary of any financing relationship between Operator and AR Lender, and Senior Secured Parties and Owner hereby expressly waive and relinquish their respective rights to claim otherwise. Notwithstanding anything herein (whether express or implied) to the contrary, to the extent FHA Lender receives Current Impositions or the proceeds thereof, FHA Lender shall be entitled to retain the same and shall not be required to hold the same in trust or to disgorge the same to AR Lender, irrespective of whether the same constitutes proceeds of AR Lender Priority Collateral.

3.5 Except as set forth herein, Operator certifies that there are no proposed agreements, arrangements, understandings or transactions (side deals) outside of the AR Loan Documents that utilize the Accounts of Operator as security for any other obligations. Operator agrees that Operator shall not be a guarantor or party to any other accounts receivable financing agreement without the consent of FHA Lender and HUD.

3.6 Except as set forth herein or as otherwise disclosed to and approved by HUD in writing, (a) AR Lender and Operator certify and agree that there are no existing or proposed agreements, arrangements, understandings or transactions that involve the facility (side deals) between (i) Operator (or any of Operator's officers, members, managers, directors, stockholders, partners, or other interest holders, employees or affiliates, or any member of their respective immediate families, and/or its parent entity), and (ii) AR Lender; and (b) FHA Lender and Operator certify and agree that there are no existing or proposed agreements, arrangements, understandings or transactions that involve the Facility (side deals) between (i) Operator (or any of Operator's officers, members, managers, directors, stockholders, partners, or other interest holders, employees or affiliates, or any member of their respective immediate families, and/or its parent entity), and (ii) FHA Lender.

4. MISCELLANEOUS

4.1 **Beneficiaries.** This Agreement is entered into solely for the benefit of AR Lender, FHA Lender, HUD, and their respective loan participants, successors and assigns, and neither Operator, Owner nor any other persons or entities whatsoever, including but not limited to any third party donee, investor, incidental beneficiary or any creditor of Operator or Owner (other than HUD), shall have any right, benefit, priority or interest under or because of the existence of this Agreement.

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4.2 **Amendment.** This Agreement contains the entire understanding of the Parties with respect to the subject matter hereof, and shall not be modified, amended or terminated orally but only in writing signed by AR Lender, FHA Lender, Owner and Operator.

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4.3 **Bankruptcy Financing.** In the event of the commencement of a bankruptcy, insolvency or similar type of proceeding filed by or against the Operator ("Proceeding"), AR Lender shall have the non-exclusive option (in its sole and absolute discretion) to continue to provide financing (on terms acceptable to AR Lender) to the

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trustee, other fiduciary or to the Operator as a debtor-in-possession, if AR Lender deems such financing to be in its best interests. The subordination and lien priority provisions of this Agreement shall continue to apply to all AR Lender Priority Collateral arising upon the commencement and during the pendency of such Proceeding, so that AR Lender shall have a prior lien on all AR Lender Priority Collateral, created before and during such Proceeding (to the extent AR Lender provides such financing during the Proceeding or to the extent Operator is granted the right to use, sell, or otherwise dispose of cash collateral during any such Proceeding), to secure the AR Loans, whether advanced before or during such Proceeding.

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4.4 **Relative Rights; Amendment to Loan Documents; Cure.**

(a) This Agreement is entered into solely for the purposes set forth herein, and except as expressly provided herein, neither AR Lender nor FHA Lender assumes any other duties or responsibilities to the other regarding the financial condition of Operator, Owner or any other party, or regarding any of Operator's property, or regarding any other circumstance bearing upon the risk of nonpayment of the obligations of Operator or Owner under any of the agreements referred to herein. Each of AR Lender and FHA Lender shall be responsible for managing its financial relationships with Operator and Owner, and neither shall be deemed to be the agent of the other for any purpose.

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(b) AR Lender and the FHA Lender agree to notify the other of any notice of a "material default" given to their respective borrower under any of the AR Loan Documents or any of the HUD Loan Documents as applicable; provided, that the failure to provide such notice shall not subject such Party to any liability. AR Lender and the FHA Lender shall have the right (but not the obligation) to cure any payment default under the other Party's documents within ten (10) days after notice thereof. "Material default" for purposes of this Section shall mean (i) with regard to FHA Lender and the HUD Loan Documents, a default by the borrower thereunder triggering FHA Lender's commencement of assignment to HUD of the HUD Loan, a foreclosure, or an action for the appointment of a receiver or similar remedy; and (ii) with regard to AR Lender and AR Loan Documents, a default thereunder which allow AR Lender to cease making Advances or results in the acceleration or maturity of the AR Loan.

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4.5 **Notices.** Any notice or service of process given, or required to be given, pursuant hereto and in connection herewith shall be in writing and shall be deemed to be properly given if sent by certified mail return receipt requested, telecopy (provided any telecopy notice will also be sent by a second method approved herein), hand delivery or via a nationally recognized overnight courier service, addressed to the Party for whom it is intended at its address hereinafter set forth.

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4.6 **Counterparts; Facsimile Signatures.** This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, and all of which together constitute one and the same agreement. Signature by facsimile shall bind the Parties hereto.

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4.7 **Authorization.** Each individual signatory hereto represents and warrants that he or she is duly authorized to execute this Agreement on behalf of his or her principal and that he or she executes the Agreement in such capacity and not as a Party.

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4.8 **Successors and Assigns.** This Agreement shall be binding upon the Parties hereto and their legal representatives, successors and assigns. Each of the parties hereto agrees not to assign their rights to the AR Loan and/or the HUD Loan Documents to Operator or any affiliate of Operator.

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4.9 **Governing Law.** This Agreement and all matters arising out of or related to this Agreement shall be deemed to have been made under, and shall be governed and construed in all respects by, the substantive laws of the State of [enter property or organizational jurisdiction] without regard to principles of conflicts of laws.

4.10 **Venue.** FHA Lender and AR Lender hereby irrevocably consent to the nonexclusive jurisdiction of the State and Federal Courts located in the State of [enter property or organizational jurisdiction] in any and all actions and proceedings arising under or in connection with this Agreement.

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4.11 **WAIVER OF JURY TRIAL. EACH PARTY HERETO HEREBY WAIVES ANY AND ALL RIGHTS IT MAY HAVE TO A JURY TRIAL IN CONNECTION WITH ANY LITIGATION COMMENCED BY OR AGAINST THE OTHER WITH RESPECT TO THE RIGHTS AND OBLIGATIONS SET FORTH HEREIN.**

4.12 **Severability.** If a court of competent jurisdiction in a final determination deems any provision of this Agreement invalid, prohibited or unenforceable, such invalidity, prohibition or unenforceability shall apply only to such provision and only to the extent of such invalidity, prohibition or unenforceability, and shall not render this Agreement or any other provision of this Agreement wholly or partially invalid, prohibited or unenforceable.

4.13 **Headings.** The paragraph headings used in this Agreement are for convenience only and shall not affect the interpretation of any of the previous hereof. The statements set forth in the Recital paragraphs are incorporated herein by reference.

4.14 Implementation of Agreement; Information; Further Assurances. AR Lender and Operator hereby agree to immediately effectuate amendments to the AR Loan Documents as and to the extent necessary to conform the AR Loan Documents to this Agreement. AR Lender and Operator hereby authorize FHA Lender and its agents to file amendments to all presently effective financing statements listing AR Lender as secured party and Operator as a debtor amending the collateral description set forth in such presently effective financing statements to reflect the agreements set forth in this Agreement. AR Lender shall, from time to time, promptly following a request by FHA Lender or HUD provide (and Operator hereby authorizes AR Lender to provide) to FHA Lender or HUD any and all information and documents available to AR Lender regarding the AR Loan and/or the AR Lender Priority Collateral (including, but not limited to, histories of draws upon, payments on account of, and outstanding balances with respect to, the AR Loan). AR Lender and Operator will, from time to time, promptly execute and deliver all further instruments and documents, and take all further actions, that may be reasonably necessary or desirable or that FHA Lender or HUD may reasonably request, to protect any right or interest granted by this Agreement or to enable the Parties to exercise and enforce their rights and remedies granted or provided for in this Agreement.

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4.15 Entire Agreement. This Agreement is the entire agreement among the Parties regarding the subject matter of this Agreement.

IN WITNESS WHEREOF, the undersigned have executed this Agreement the day and year first above written.

AR LENDER:

a _____
By: _____
Name: _____
Title: _____

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Deleted: a _____
Deleted: _____
Deleted: Name: _____
Deleted: _____
Deleted: _____
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FHA LENDER:

a _____
By: _____
Name: _____
Title: _____

Deleted: MORTGAGEE: _____
Deleted: _____
Deleted: _____
Deleted: Name: _____
Deleted: _____

OPERATOR:

a _____
By: _____
Name: _____
Title: _____

Deleted: _____
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CONSENTED AND AGREED TO: _____
LESSEES: _____
a _____
By: _____
Deleted: : _____
Deleted: : _____

OWNER:

a _____
By: _____
Name: _____
Title: _____

Deleted: _____
a _____
By: _____
Deleted: : _____
Deleted: : _____

Schedule 1

AR Loan Documents

LESSOR:

—, a

By: _____
Name: _____

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1. *Journal of the American Medical Association*, 2000; 284: 2689-2695.

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Facilities
LESSOR

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Schedule 2

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HUD Loan Documents

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Exhibit A

Form of Cut-Off Time Notice

_____, 20____

Attn: _____

Re: Intercreditor Agreement Dated as of _____, 20____ by and among

("AR Lender"), _____ ("FHA Lender"),

("Owner") and _____ ("Operator") (the
"Intercreditor Agreement")

Ladies and Gentlemen:

This letter constitutes the notice of the Cut-Off Time described in the Intercreditor Agreement. All capitalized terms used, and not otherwise defined, herein shall have the meanings provided for in the Intercreditor Agreement.

Please be advised that a Triggering Event has occurred as a result of _____ and that the Cut-Off Time is _____ [a.m./p.m.], _____ time, on _____, 20____. All provisions of the Intercreditor Agreement applicable after the Cut-Off Time shall govern the future relationship of AR Lender, FHA Lender, HUD, Owner, and Operator under the Intercreditor Agreement.

Please contact the undersigned at _____ if you have any questions.

Sincerely,

By: _____

Name:

Title:

cc: _____
